

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 746 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

and

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

LAKHUBHANARANJI

Appearance:

MR KP RAVAL, APP for Appellant
MR JG SHAH for Respondents

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE J.R.VORA

Date of decision: 22/08/2000

ORAL JUDGEMENT : [Per : Vora, J.]

1. This Appeal is preferred by the State, against the order and judgment of acquittal passed by learned Addl. Sessions Judge, Kutch - Bhuj, in Session Case No. 69 of 1984. The accused in the above mentioned case were charged under Sections 302, 323, 325, 504, 147, 149 and 340 of the IPC. Learned Trial Judge acquitted all the accused vide his order dated 8th March, 1985.

2. As per the case of the prosecution, incident in question occurred at village Ustiya at 2330 hours on 11th May, 1984. Complaint of which came to be filed by one Karshandas Naranji before Naliya Police Station on 12th May, 1984 at 1730 hours. In the above mentioned complaint, which is produced at Exh. 122 of the record, in all, names of 27 accused were mentioned. As per the complainant, complainant and his brother Mohanlal Shankarlal got down at their village Bus stop in a bus from village Nakhatrana to Asapur. When they got down from the bus, his brother Mohanlal Shankarlal run away because the accused were gathered at the bus stand for quarreling with the complainant. Before that one Dhanji Kalyanji original accused No.24 came to the complainant and said that why the complainant was taking interest in the development of the village. At that very juncture, according to the complaint filed by the complainant, all the 27 accused started beating him. Complainant shouted for help and, therefore, the neighbours came to the place of incident. It is stated in the complaint that all 27 accused named, were with sticks in their hands. According to the complaint, in all, 4 persons were injured in the incident, they were taken to hospital at Bhuj on the next day and one Shankarlal Naran died due to injuries on 12th May, 1984.

3. Police investigated the offence registered in pursuance of this complaint and filed a charge sheet against 27 accused in the court of learned JMFC, Naliya, but since the case was triable by the Court of Sessions, the same was committed to the Court of Sessions, Kutch at Bhuj, which was numbered as Session Case No. 69 of 1984.

4. The charge was framed at Exh.1 by the learned Addl. Sessions Judge, Kutch at Bhuj, against all the accused under the above mentioned sections of the Indian

Penal Code. On denial of the charges by the accused, the prosecution led oral as well as documentary evidence. Thereafter both the sides were heard. Learned Trial Judge vide his order dated 8th March, 1985 came to the conclusion that the prosecution failed to prove the case against the accused beyond reasonable doubt, and they were required to be acquitted. Being aggrieved, this Appeal is filed by the State against all the 27 accused.

5. This Court vide order dated 23rd December, 1985, after granting Leave admitted the Appeal of the State against original accused No.1 Lakhubha Naranji, accused No.11 Olubha Chandaji, accused No. 17 Takhubha Jilubha, accused No.21 Rajubha Khengarji, accused No. 23 Jayvantsinh Jatubha, accused No.24 Dhanji Kalyanji and accused No.25 Mangal Kharjuria, and bailable warrants were issued against above accused. This court further ordered that except this 7 accused, there was no evidence against the remaining respondents accused to connect them with the alleged crime and, therefore, this court did not interfere with the order of acquittal so far as the remaining accused were concerned. Thus out of 27 respondents/accused, this court admitted acquittal appeal of the State against only above referred 7 accused/respondents.

6. Learned APP Mr. K.P.Raval, on behalf of the State and learned Advocate Mr.J.G. Shah for the respondents were heard.

7. Learned APP Mr. Raval vehemently urged that this is a case of murder and injuries to eye witnesses. It is submitted that the homicidal death of deceased Shankarlal Naran is proved by the prosecution and the injuries to other witnesses were also proved. It is vociferously argued that there are as many as six injured eye witnesses and three other eye witnesses of the incident, and even then, learned Trial Judge erred in appreciating their evidence of the prosecution, and acquitted the accused. Learned APP Mr. Raval took us to the relevant evidence.

8. On re-appreciating of the evidence overall, we found that this is a case wherein no interference of this court is required. The established principle of law is that the acquittal appeals are not to be lightly interfered, unless it is shown that while appreciating of the evidence, miscarriage of justice has been caused. Further, it is not the quantity i.e. number of eye witnesses, is material, but the quality of evidence is material to connect the accused with the crime.

9. While, we re-appreciated the evidence as urged by learned APP Mr. Raval, we found that the prosecution case suffers from all the infirmities, which a prosecution case could suffer. When we take into consideration the evidence of complainant, we found that the complainant has stated altogether a different story in his deposition at Exh.51, which is in contradiction/omission to his complaint given before Naliya Police Station. The contradiction goes to the root of the prosecution case to the extent that the complainant and the witnesses have changed the scene of offence. Therefore, the prosecution case suffers infirmities like change of scene of offence, late filing of First Information Report, which is late by 21 hours, for which no explanation, whatsoever, is coming from any of the witnesses. All the witnesses state that there was a dark at the time of the incident and, ultimately, they would not be able to say, in fact who was hit by which accused. The possibility of involving the false accused and the concoction of a prosecution story, cannot be ruled out due to late filing of the FIR because some of the witnesses have admitted that there was a meeting of a caste before the complaint was filed. Surprisingly, it is also found that one of the eye witnesses Ladharam Premji Exh.43 also filed a complaint before Naliya Police Station regarding the same incident, which Naliya Police Station registered as N.C.Case No. 51/84 dated 12.5.84, which is produced at Exh. 119. In the complaint, Mr. Ladharam Premji has stated that Karshandas Naranji original complainant, Mohanlal Shankarlal, brother of the complainant and witness Ladharam himself after getting down from the bus were going towards the village and while they were passing through a flour mill of accused No.23 Jayvantsinh Jatubha, they found two persons standing with the sticks in their hands and one of them was accused No.17 Takhubhai Julubha and another accused No. 21 Rajubha Khengarji respectively, and accused Takhubhai Julubha gave a stick blow on the left hand of witness Ladharam Premji and, therefore, witness Ladharam Premji run away from the place of incident. The prosecution case suffers one more serious infirmities and i.e. contradiction between medical evidence and oral evidence. It is specifically stated by all the witnesses that the accused were armed with sticks while Doctor found CLW injury on the body of the deceased, which could be caused by sharp edged weapons.

10. All the injured eye witnesses as well as eye witnesses deposed the fact regarding the incident in contradiction to each other and makes improvements in the prosecution story and the contradictions and omissions have been duly proved by the defence through the Investigating Officer. The story of prosecution, due to the different story narrated by the witnesses including complainant, becomes so dubious that a doubt is created in the evidence of the prosecution as to the manner and the mode of incident alleged to have been occurred and the injuries which the deceased and injured received. Not only that the accused also were found with injuries on their person. No explanation is coming forward from the prosecution to explain the injuries. Therefore, the prosecution conceals genesis of the occurrence and the benefit must go to the accused.

11. As aforesaid, on re-appreciating the evidence, the case of the prosecution becomes doubtful and we are unable to take other view than the view taken by the trial court. We are convinced by the reasoning of the trial court for the acquittal, and therefore, we do not require to give further reasons. The order of acquittal passed by the trial judge, for the aforesaid reasons requires no interference.

12. In this view of the matter, this Appeal fails and dismissed accordingly. Bail bonds of the respondents concerned stand cancelled.

(K.R. Vyas, J.) (J.R. Vora, J.)

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